

BRIAN R. HOCH, ESQ.
Attorney for BYRAM CONCRETE & SUPPLY, INC.
Three Barker Avenue
White Plains, New York 10601
(914) 421-1900

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
BYRAM CONCRETE & SUPPLY, INC. and
BYRAM READY MIX, INC.,

Plaintiffs,

-against-

CITY OF NEW ROCHELLE, FRANK TRICARICO
CONTRACTORS, INC. and FRANK TRICARICO,

Defendants.
-----X

Related SDNY
Bankruptcy 09-22037 (ASH)

District Court
Index No.: 09-CV3737

Supreme Court –West.County
Index No. 433/09

NOTICE OF REMOVAL

**TO THE HONORABLE DISTRICT COURT JUDGE
ASSIGNED TO THESE PROCEEDINGS:**

BYRAM CONCRETE & SUPPLY, INC. (referred to herein as the “Debtor” or “Byram”), by its attorney Brian R. Hoch, Esq., respectfully provides notice to this Court of removal of the above-captioned action from the Supreme Court of the State of New York, County of Westchester, to the United States District Court for the Southern District of New York, and respectfully represents as follows:

1. On or about January 8, 2009, BYRAM CONCRETE & SUPPLY, INC., one of the Plaintiffs and Debtor herein, (“Plaintiff”) filed the Summons and Complaint against the above-captioned Defendants in Supreme Court, Westchester County (the “State Court”), a copy of which is attached hereto as Exhibit “A”.

2. The action has been assigned Index Number 433/09 in the State Court.
3. On or about February 24, 2009, Defendant FRANK TRICARICO CONTRACTORS, INC. and FRANK TRICARICO filed an Answer containing counterclaims, a copy of which is annexed hereto as Exhibit "B".
4. On or about March 20, 2009, Defendant CITY OF NEW ROCHELLE filed an Answer, a copy of which is annexed hereto as Exhibit C.
5. On or about January 11, 2009, Byram filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the Southern District of New York, Index No. 09-22037 (ASH).
6. This Notice of Removal is filed in the capacity of Byram as a co-Plaintiff and counterclaim Defendant. The claims of Byram in the Complaint and the counterclaims are inextricably intertwined and thus cannot, with judicial economy, be determined separately. A separate determination of the claims of Byram in the Complaint and the counterclaims would lead to a risk of conflicting and/or inconsistent results.
7. The process and pleadings within the meaning of 28 U.S.C. Section 1446(a) and 1452 are annexed hereto.
8. This action is a "core proceeding" within the meaning of 28 U.S.C. §157(b)(2)(A),(B),(C), and(O) in that the action concerns (i) claims against the estate, and (ii) the ability of the Debtor to timely proceed in its attempt to reorganize under Chapter 11 of the Bankruptcy Code.
9. The Notice of Removal is filed within 90 days of the filing of the petition, making this removal timely pursuant to Rule 9027 of the Federal Rules of Bankruptcy

Procedure.

10. The Debtor was continued in possession of its property and management of their affairs as debtors-in-possession pursuant to Sections 1107 and 1108 of the Code.

11. Pursuant to 28 U.S.C. Section 1334(d) and the permanent order of reference of the United States District Court for the Southern District of New York issued pursuant to 28 U.S.C. §157, the Bankruptcy Court has jurisdiction over the allowance and disallowance of claims. Consequently, the above-captioned action which involves the disposition of property of the Debtor as well as the proper administration of the Debtor's bankruptcy estate should be decided by the Honorable Judge assigned to these proceedings. This action is a civil action of which this Court has original jurisdiction under the provisions of 28 U.S.C. Section 1334, and is one which may be removed to this Court by the Debtor pursuant to the provisions of 28 U.S.C. Section 1452 in that the matter in controversy is a civil action related to a bankruptcy case.

Dated: April 13, 2009

INC. (s)
BRIAN R. HOCH, ESQ.
Attorney for BYRAM CONCRETE & SUPPLY,
Three Barker Avenue
White Plains, New York 10601
(914) 421-1900

TO: McDONOUGH LAW FIRM, L.L.P.
Attorneys for Defendants FRANK TRICARICO CONTRACTORS, INC. AND
FRANK TRICARICO
145 Huguenot Street
New Rochelle, New York 10801
(914) 632-4700

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER, LLP
Attorneys for THE CITY OF NEW ROCHELLE
3 Gannett Drive
White Plains, New York 10604
(914) 632-4700

CERTIFICATE OF SERVICE

The undersigned certifies that on April 13, 2009, a copy of the Plaintiff, BYRAM CONCRETE & SUPPLY, INC.'s, Notice of Removal was served upon the following counsel via regular mail addressed to each of them at the address designed for such purpose:

The McDonough Law Firm, LLP
145 Huguenot Street
New Rochelle, New York 10801

and

Wilson, Elser, Moskowitz, Edelman & Dicker
3 Gannett Drive
White Plains, New York 10801

Dated: White Plains, New York
April 13, 2009

(s) _____
BRIAN R. HOCH, ESQ. (BH 5369)

La. Proacts

- Summons without Notice, Blank Court
Personal or Substituted Service. 12 pt. type, 4-94

BB0110498 Vendor, Publisher, NYC 10013

www.blumberg.com

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF WESTCHESTER
BYRAM CONCRETE & SUPPLY, INC. and BYRAM READY MIX, INC.,

Index No. **OS** (og

Date purchased /

Plaintiff(s) designate(s) Westchester
County as the place of trial.

against

CITY OF NEW ROCHELLE, FRANK TRICARICO CONTRACTORS, INC. and FRANK
TRICARICO,

Plaintiff(s)

= :

UMMIM

Defendant(s)

The basis of the venue is Plaintiff's principal place of business

Plaintiff(s) reside(s) at 56 Lafayette Avenue, White Plains, New York : 10603
County of Westchester
To the above named Defendant(s)

19ou are bertbp !Suntmoneb to answer the complaint in this action, and to serve a
copy of your answer, or, if the complaint is not served with this summons, to serve a notice
of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this
summons, exclusive of the day of service (or within 30 days after the service is complete if
this summons is not personally delivered to you within the State of New York); and in case of
your failure to appear or answer, judgment will be taken against you by default for the relief
demanded **in** this complaint.

BRIAN R. HOCH, ESQ.

Dated, December 10, 2008

Defendant's address: See attached

BRIAN R. HOCH, ESQ.

Attorney(s) for Plaintiff
Plaintiffs
Office and
Post Office

Address 3
Barker
Avenue
White Plains, New
York 10601 914-
421-1900

A_{10I,~}



Defendants' Addresses:

CITY OF NEW ROCHELLE 515 North Avenue
New Rochelle, New York 10801

FRANK TRICARICO CONTRACTORS, INC. c/o Frank Tricarico
771 Forest Avenue
Larchmont, New York 10538

FRANK TRICARICO
771 Forest Avenue Larchmont, New York 10538

SUPREME COURT OF THE STATE OF NEW YORK COUNTY
OF WESTCHESTER

x

BYRAM CONCRETE & SUPPLY, INC. and
BYRAM READY MIX, INC.,
VERIFIED COMP

Index No. ~&3 /0!(
-against

af,q
CITY OF NEW ROCHELLE, FRANK TRICARICO
CONTRACTORS, INC. and FRANK TRICARICO,

~®

Defendants.

I \v®

Plaintiffs, BYRAM CONCRETE & SUPPLY, INC. and BYRAM READY MIX, INC. ° ~4'~
by their attorney, **BRIAN R. HOCH, ESQ.**, as and for their Verified Complaint
against Defendants, allege:

AS AND FOR A FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS

1. That at all times hereinafter mentioned, Plaintiffs were domestic corporations organized pursuant to the laws of the State of New York with principal offices located at 56 Lafayette Avenue, White Plains, New York 10603.
2. That upon information and belief, at all times hereinafter mentioned, Defendant CITY OF NEW ROCHELLE ("CITY") was, and still is, a public corporation duly organized and existing under the laws of the State of New York and is made a Defendant to this action solely by reason of the fact that Defendant is in possession of funds due and owing to Defendant FRANK TRICARICO CONTRACTORS, INC. under the contract hereinafter described.
3. That upon information and belief, at all times hereinafter mentioned, Defendant FRANK TRICARICO CONTRACTORS, INC. was a domestic corporation organized pursuant

Plaintiffs,





to the laws of the State of New York with principal offices located in the County of Bronx, City and State of New York.

4. That upon information and belief, Defendant FRANK TRICARICO was, and still is, an officer/director/shareholder of Defendant FRANK TRICARICO CONTRACTORS, INC. and resides in the County of Westchester, State of New York.

5. That upon information and belief, prior to August 15, 2006, Defendant FRANK TRICARICO CONTRACTORS, INC. entered into an agreement with Defendant CITY for construction of a certain public improvement, to wit: the North Avenue Widening Project in the City of New Rochelle, Project No. 04-597-P9 (the "Project").

6. That upon information and belief, Defendant FRANK TRICARICO CONTRACTORS, INC. duly performed all of the terms of said contract with Defendant CITY on its part to be performed.

7. That subsequent to the making of said contract and during the performance thereof and between August 16, 2006 and September 15, 2007, Plaintiffs furnished to Defendant CITY through Defendant FRANK TRICARICO CONTRACTORS, INC. certain materials for the construction of said public improvement, which materials were in fact used in the construction of said improvement, to wit: concrete and other masonry supplies for which there remains a balance due Plaintiffs in the total sum of One Hundred Forty-One Thousand Four Hundred Six & 75/100 (\$141,406.75) Dollars, no part of which sum has been paid.

8. That on or about February 28th and February 29th, 2008, prior to the time when the construction of said public improvement was completed or accepted, Plaintiffs duly filed in the offices of Defendant CITY Notices of Mechanic's Lien, true and complete

copies of which are annexed hereto as Exhibits A and B respectively.

2

9. Said Notices of Lien were in writing, verified by the lienors, stated the names and residences of the lienors, the name of the contractor to whom the aforesaid materials were furnished, the amount claimed to be due and the date when due, a description of the public improvement upon which the materials were expended, the kind of materials furnished, and a general description of the contract pursuant to which the public improvement was constructed.

10. That said Notices of Lien were also duly served upon Defendant FRANK TRICARICO CONTRACTORS, [INC. as](#) per the statute (Exhibit C and D respectively).

11. Neither said liens nor the claims upon which they are based have been paid, waived, cancelled or discharged, and no action or proceeding other than this action has been brought to foreclose or to enforce said lien or claim other than this action.

12. That upon information and belief, the amount claimed herein by Plaintiffs does not exceed the amount still due and owing from Defendant CITY to Defendant FRANK TRICARICO CONTRACTORS, INC.

13. That by reason of the foregoing, Plaintiffs have acquired valid liens upon said contract and upon the monies in the control of Defendant CITY applicable to the construction of said public improvement, to the extent of One Hundred Forty-One Thousand Four Hundred Six & 75/100 (\$141,406.75) Dollars.

AS AND FOR A SECOND CAUSE OF ACTION
AGAINST DEFENDANT FRANK TRICARICO

CONTRACTORS, INC.

14. Plaintiffs repeat and reallege each and every allegation contained in Paragraphs 1 through 13 of this Verified Complaint as if herein set forth at length.

15. That on or about August 16, 2006, Plaintiffs entered into a contract with Defendant FRANK TRICARICO CONTRACTORS, INC. wherein Plaintiffs agreed to

supply

3

concrete and other masonry materials to Defendant for the public improvement contract between Defendant CITY and Defendant FRANK TRICARICO CONTRACTORS, INC.

16. That Plaintiffs have complied with all of the terms and provisions of the parties' contract and duly demanded payment from Defendant for the amounts due and owing, which payment has been refused and or neglected by the Defendant.

17. That as a result of Defendant's breach of its contract with Plaintiffs, Plaintiffs Plaintiffs have been damaged in the sum of One Hundred Forty-One Thousand Four Hundred Six & 75/100 (\$141,406.75) Dollars with interest thereon from September 15, 2007.

AS AND FOR A THIRD CAUSE OF ACTION
AGAINST DEFENDANT FRANK TRICARICO
CONTRACTORS INC. AND A FIRST CAUSE OF ACTION
AGAINST DEFENDANT
FRANK TRICARICO.

18. Plaintiffs repeat, reiterate and reallege each and every allegation contained in Paragraphs 1 through 17 of the within Verified Complaint with the same force and effect as if fully set forth herein at length.

19. That upon information and belief, Defendant FRANK TRICARICO CONTRACTORS, INC. was paid by Defendant CITY for the work and materials provided by Plaintiffs for this project. That the funds to which Plaintiffs were entitled were received by Defendant FRANK TRICARICO CONTRACTORS, INC. exclusively pursuant to Defendant's contract with Defendant CITY for the public improvement project described herein.

20. That based upon the foregoing, Defendant FRANK TRICARICO CONTRACTORS, INC. has made unauthorized, illegal, unjustified and improper payments and diversion of trust funds as a matter of law.

4

21. That the Defendant FRANK TRICARICO CONTRACTORS, INC.'s improper use of such funds was with notice and knowledge of both the source thereof and of Plaintiffs' claims for the balances due Plaintiffs on this project.

22. That by accepting, retaining and failing to pay such proceeds to Plaintiffs as required by law, Defendant FRANK TRICARICO CONTRACTORS, INC. diverted these funds from Plaintiffs who are entitled by statute to be beneficiaries thereof.

23. That such monies received by Defendant FRANK TRICARICO CONTRACTORS, INC. were statutory trust funds and were required by law to be first applied to the payment of Plaintiffs' claims and thus, the Defendant's diversion thereof was unlawful.

24. That by reason of the foregoing, Defendant FRANK TRICARICO CONTRACTORS, INC. violated §77 of the Lien Law of the State of New York.

25. That upon information and belief, Defendant FRANK TRICARICO

CONTRACTORS, INC. did not maintain any accounting records to reflect the establishment of any trust fund for the protection of Plaintiffs and other contractors and materialmen on this construction project.

26. That pursuant to §79 of the Lien Law of the State of New York, Defendant FRANK TRICARICO CONTRACTOR INC.'s failure to maintain the books and records as required by §75 of the Lien Law of the State of New York is presumptive evidence-that the Defendant as trustee, applied or consented to the application of trust funds received for purposes other than trust purposes as stated in §71 of the Lien Law of the State of New York.

27. That in addition, pursuant to §79a of the Lien Law of the State of New York, any officer or director of a trust arising under Article 3a of the Lien Law of the State of New York

5

who applies or consents to the application of trust funds received not for purposes of that trust is personally liable to the beneficiaries of the trust.

28. Accordingly, Defendant FRANK TRICARICO as an officer and principal of Defendant FRANK TRICARICO CONTRACTORS, INC. is personally liable to Plaintiffs for the violations of the Lien Law stated herein.

29. That in addition, due to the Defendants' violation of the statutes in receiving trust funds without paying monies due to Plaintiffs, Plaintiffs are also entitled to recover exemplary damages and counsel fees against Defendants FRANK TRICARICO CONTRACTORS, INC. and FRANK TRICARICO.

AS AND FOR A FOURTH CAUSE OF ACTION AGAINST DEFENDANT
FRANK TRICARICO CONTRACRTORS, INC.

30. Plaintiffs repeat and re-allege each and every allegation contained in Paragraphs 1

through 29 of this Verified Complaint as if herein set forth at length.

31. That Plaintiffs have made and delivered to Defendant monthly statements of Defendant's accounts with Plaintiffs which reflect the sum of \$141,406.75 being due and owing to Plaintiffs by Defendant.

32. That Defendant has retained said statement without any objection thereto.

33. That by reason of the foregoing, Defendant is justly indebted to Plaintiffs in the sum of \$141, 406.75 with interest from September 15, 2007.

AS AND FOR A FIFTH CAUSE OF ACTION AGAINST
DEFENDANT F° K TRICARICO
CONTRACTORS INC.:

34. Plaintiffs repeat and reallege each and every allegation contained in Paragraphs 1 through 33 of this Verified Complaint as if set forth herein at length.

6

35. That based upon the foregoing, Defendant has been unjustly enriched by Plaintiffs.

36. That by reason of the foregoing, Plaintiffs have been damaged in the sum of \$141, 406.75 with interest from September 15, 2007.

WHEREFORE, Plaintiffs demand judgment as follows:

1. That Plaintiffs be adjudged to have a valid lien upon the monies of the Defendant CITY OF NEW ROCHELLE applicable to the construction of said public improvement, and to become due under said contract, in the sum of One Hundred Forty-One Thousand Four Hundred Six & 75/100 (\$141,406.75) Dollars with interest thereon from September 15, 2007.

2. That Defendant CITY OF NEW ROCHELLE be directed to pay over to Plaintiffs said sum of One Hundred Forty-One Thousand Four Hundred Six & 75/100 (\$141,406.75) Dollars with interest thereon from September 15, 2007, together with the costs and disbursements of this action, and that Plaintiffs have judgment therefore.

3. That in addition thereto, or in the alternative, Plaintiffs have judgment against Defendant FRANK TRICARICO CONTRACTORS, [INC. in](#) the sum of One Hundred FortyOne Thousand Four Hundred Six & 75/100 (\$141,406.75) Dollars with interest thereon from September 15, 2007.

4. That Defendants FRANK TRICARICO CONTRACTORS, INC. and FRANK TRICARICO be held liable to Plaintiffs in the sum of One Hundred Forty-One. Thousand Four Hundred Six & 75/100 (\$141,406.75) Dollars with interest from September 15, 2007 together with an award of reasonable counsel fees and exemplary damages in the amount of \$500,000.00.

7

5. That the Plaintiffs herein have such other and further relief as to the Court may seem just, proper and equitable in the premises together with the costs and disbursements of this action.

Dated: White Plains, New York December 10, 2008

BRIAN R. HOCH, ESQ.
Attorney for Plaintiffs 3
Barker Avenue
White Plains, New York 10601
(914) 421-1900

A handwritten signature in black ink, appearing to read "B. Hoch", is written over a solid black rectangular background.

8

VERIFICATION

STATE OF NEW YORK)
)
ss.: COUNTY OF
WESTCHESTER)

I, LEONARD J. LUISO am the President of BYRAM CONCRETE & SUPPLY, INC.
and BYRAM READY MIX, INC., Plaintiffs in the above-entitled action.

I have read the foregoing Verified Complaint and know the contents thereof. The
contents are true to my own knowledge, except as to those matters therein stated to be alleged
upon information and belief, and as to those matters I believe them to be true.

of ,2008

Sworn to before „me this



LEONARD J. LUISO



MAN R. HOCH
Notary Public, State of New York
No. 0, P-H04332691

in Westchester County

Expires

~

**NOTICE UNDER MECHANIC'S LIEN LAW FOR ACCOUNT OF PUBLIC
IMPROVEMENT**

To the City of New Rochelle, Department of Public Works, 515 North Avenue, New
Rochelle, New York 10801.

PLEASE TAKE NOTICE, that BYRAM CONCRETE & SUPPLY, INC., being a
New York corporation whose business address is at 56 Lafayette Avenue, White Plains,
New York 10603 and whose principal place of business is at 56 Lafayette Avenue, White
Plains, New York 10603, has and claims a lien for the principal and interest of the agreed
price and value of the labor and material hereinafter mentioned upon the moneys of such
municipal corporation applicable to the construction of the public improvement hereinafter
mentioned, to the extent of the amount due or to become due in and on the contract with said

municipal corporation hereinafter described, and hereby further state:

1. The name of the contractor for whom the labor was performed and materials furnished is Frank Tricarico Contractors, Inc., 3951 Provost Avenue, Bronx, New York 10466.
2. The amount due or to become due the lienor is \$54,941.41. The amount due the lienor is \$54,941.41. The total amount claimed to be due or to become due for which this lien is filed is \$54,941.41.

3. A description of the public improvement upon which the labor was performed and materials expended is as follows:

Widening of North Avenue in the City of New Rochelle, County of Westchester and State of New York, Project No. 04-597-P9.

4. The labor performed was none.

The material furnished was concrete and other masonry supplies.

The material actually manufactured for but not delivered to said public improvement is: none.

5. A general description of the contract pursuant to which such public improvement was constructed is as follows:

Widening of North Avenue in the City of New Rochelle, County of Westchester, State of New York, Project No. 04-597-P9.

6. The labor and materials above specified were actually performed and furnished, and had been actually used in the execution of the contract aforementioned; and the materials actually manufactured for, but not delivered to, the improvement were actually so manufactured for use in the execution of the said contract.

7. Thirty days have not elapsed since the completion and acceptance of the construction of said public improvement.

8. The statements and matters in paragraphs numbered 3 and 5 herein are alleged on information and belief.

Dated: February 21, 2008

BY' • CONCRE

SLTrPLY, INC.

By:


Leonard J. Luiso, President

ACKNOWLEDGMENT

STATE OF NEW YORK)
)
ss.: COUNTY OF
WESTCHESTER)

LEONARD J. LUISO, being duly sworn, deposes and says that deponent is the President of BYRAM CONCRETE & SUPPLY, INC. herein, that deponent has read the foregoing notice of lien and knows the contents thereof, and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters believes them to be true.

The reason why this verification is made by deponent is that deponent is an officer, to wit, the President of BYRAM CONCRETE & SUPPLY, INC. which is a domestic corporation, and deponent is familiar with the facts and circumstances herein.

The sources of deponent's information and the grounds of deponent's belief as to all matters not therein stated upon deponent's knowledge are as follows: books and records of the corporation.

/

Ad - -, X / , . Ago
Leonard ~ jr . iso



BRIAN R. HOCH
Notary Public, State of New York
No. 021-1048332691 Qualified in Westchester
Commission Expires



BYRAM CONCRETE & SUPPLY, INC., 56 Lafayette Avenue White
Plains, N.Y. 10603

Claimant

-against

FRANK TRICARICO CONTRACTORS, INC.

Amount: \$54,941.41

NOTICE UNDER MECHANIC'S LIEN LAW FOR ACCOUNT OF PUBLIC
IMPROVEMENT

BRIAN R. HOCH,
ESQ. Attorney for
Lienor 3 Barker
Avenue
White Plains, New York
10601 (914) 421-1900

AFFIRMATION OF SERVICE

BRIAN R. HOCH, [ESQ. an](#) attorney duly admitted to practice; law before
the Courts of the State of New York hereby affirms the following under the penalties of
perjury:

1. On February 27, 2008, I served a Notice Under Mechanic's Lien Law For Account of Public Improvement by certified mail return-receipt requested to:

Commissioner of Finance
City of New
Rochelle 515
North Avenue
New Rochelle, New York 10801

Dated: White Plains, New York February 27, 2008



AFFIRMATION OF SERVICE

BRIAN R. HOCH, [ESQ. an](#) attorney duly admitted to practice law before the Courts of the State of New York hereby affirms the following under the penalties of perjury:

1.' On February 27, 2008, I served a Notice Under Mechanic's Lien Law For Account of Public Improvement by certified mail return-receipt requested to:

City of New Rochelle
Department of Public
Works
515 North Avenue
New Rochelle, New York 10801

Dated: White Plains, New York February 27, 2008

BRIAN R. HOCH, ESQ.



m

U.S. Postal Service, , , , CERTIFIED MAIL, , , , RECEIPT

(Domestic Mail Only; No Insurance Coverage Provided) For delivery information visit our website at www.usps.com,

Postage	\$	Postmark Here
Total Postage & Fees	\$	
Certified Fee		4.

to

Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
PS Form 3800, August 2006		See Reverse for Instructions
U.S. Postal Service m, (Domestic Mail Only; No Insurance Coverage Provided)		
For delivery information visit our website at www.usps.com		
Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees		

3. Article Addressed to:

5. Return Receipt for Merchandise 0 COD



W

G G G

D Registered

~ ~ ~
krrified

d
°C
171

~ E~ress Mail

Dinsured 7°

N

Return Receipt for Merchandise 0 COD
5. Received By: (Print Name)

6. Signature (A es§ebrAgent)

2

~ ~ / D / - (t " , ~

a

y

PS Form 381 , December 1994

7. Date of Delivery

e
fee Is paid)

W

10

ted and ' 8. Addressee's Address (Only If reques

102595-99-B-0223 Domestic Return Receipt

d SENDER: v

- 0 Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- 3 Print your name and address on the reverse of this form s card to you.
- d 0 Attach this form to the front of the mailpiece, or on the ba m permit.
- 0 Write "Return Receipt Requested" on the mailpiece below, the article number. 0 The Return Receipt will show to whom the article was del
- vered and the date p delivered.

that we can return this

I also wish to receive the following services (for an extra fee):

k' If space does not

1 • 0 Addressee's Address

ai .y

2• p Restricted Delivery

m 3. Article Addressed to: Wy1ISS fOU-t

o C_tU

N

~ ~ / D / - (t " , ~

w 5-1 0

® ~D (

a Z

3 0 A

8. Addressee's Address (Only if requested and fee is paid)



4a. Article Number G.
0
m
TOB 6 -W /S
~ 600 / 6037
0
 4b. Service Type 0 Registered ~B; Certified 0 Express Mail 0 insured \$k<return Receipt for Merchandise 0 COD
d

7. Date of Delivery

5. Received By: (Print Name) A
5r
/

6. Signatur Add ee or Agent,)

PS For 3811, December 1994

102595-99-8-0223 Domestic Return Receipt

NOTICE UNDER MECHANIC'S LIEN LAW FOR ACCOUNT OF PUBLIC IMPROVEMENT

To the City of New Rochelle, Department of Public Works, 515 North Avenue, New Rochelle, New York 10801.

PLEASE TAKE NOTICE, that BYRAM READY MD(INC., being a New York corporation whose business address is at 56 Lafayette Avenue, White Plains, New York 10603 and whose principal place of business is at 56 Lafayette Avenue, White Plains, New York 10603, has and claims a lien for the principal and interest of the agreed price and value of the labor and material hereinafter mentioned upon the moneys of such municipal corporation applicable to the construction of the public improvement hereinafter mentioned, to the extent of the amount due or to become due in and on the contract with said municipal corporation hereinafter described, and hereby further state:

1. The name of the contractor for whom the labor was perform, bd and materials furnished is Frank Tricarico Contractors, Inc., 3951 Provost Avenue, gronx, New York 10466.
2. The amount due or to become due the lienor if \$86,465.34. The amount due the lienor is \$86,465.34. The total amount claimed to be due or to become due for which this lien is filed is \$86,465.34.
3. A description of the public improvement upon which the labor was performed and materials expended is as follows:

Widening of North Avenue in the City of New Rochelle, County of Westchester and State of New York, Project No. 04-597-P9.

4. The labor performed was none.

The material furnished was concrete and other masonry supplies.

The material actually manufactured for but not delivered to said public improvement is: none.

5. A general description of the contract pursuant to which such public improvement was constructed is as follows:

Widening of North Avenue in the City of New Rochelle, County of Westchester, State of New York, Project No. 04-597-P9.

6. The labor and materials above specified were actually performed and furnished, and had been

actually used in the execution of the contract aforementioned; and the materials actually manufactured for, but not delivered to, the improvement were actually so manufactured for use in the execution of the said contract.

7. Thirty days have not elapsed since the completion and acceptance of the construction of said public improvement.

8. The statements and matters in paragraphs numbered 3 and 5 herein are alleged on information and belief.

Dated: February 21, 2008

B:

BYRAM READY MIX, INC.

Leonard J. Luiso, President

ACKNOWLEDGMENT

STATE OF NEW YORK)
)

ss.: COUNTY OF
WESTCHESTER)

LEONARD J. LUISO, being duly sworn, deposes and gays that deponent is the President of BYRAM READY MIX, INC. herein, that deponent has read the foregoing notice of lien and knows the contents thereof, and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters believes them to be true.

The reason why this verification is made by deponent is that deponent is an officer, to wit, the President of BYRAM READY MIX, INC. which is a domestic corporation, and deponent is familiar with the facts and circumstances herein.

The sources of deponent's information and the grounds:of deponent's belief as to all matters not therein stated upon deponent's knowledge are as follows: books and records of the corporation.

215 day of Fe

Swo re me this bruary 2008.

Leonard J. Luiso

13RIK N R. HOC9
N(y'~+.°V riub,^A. 'S=F:? of New YD&'

~' ...~' ~'~'~' N:ra: _____ 10 **131** 1 ~'~'~'~'

oo ----- o ----- o ----- X
BYRAM READY MIX, INC. 56 Lafayette Avenue White
Plains, N.Y. 10603

Claimant

-against

FRANK TRICARICO CONTRACTORS, INC.

x

Amount: \$86,465.34

NOTICE UNDER MECHANIC'S LIEN LAW FOR ACCOUNT OF PUBLIC
IMPROVEMENT

BRIAN R. HOCH,
ESQ. Attorney for
Lienor 3 Barker
Avenue
White Plains, New York
10601 (914) 421-1900

AFFIRMATION OF SERVICE

BRIAN R. HOCH, [ESQ. an](#) attorney duly admitted to practice law before
the Courts of the State of New York hereby affirms the following under the penalties of
perjury:

1. On February 26, 2008, I served a Notice Under Mechanic's Lien Law For Account
of Public Improvement by certified mail return-receipt requested to:

Commissioner of Finance
City of New
Rochelle 515
North Avenue
New Rochelle, New York 10801

Dated: White Plains, New York February 26, 2008



Affirmation of Service

BRIAN R. HOCH, [ESQ.](#) an attorney duly admitted to practice law before the Courts of the State of New York hereby affirms the following under the penalties of perjury:

1. On February 26, 2008, I served a Notice Under Mechanic's Lien Law For Account of Public Improvement by certified mail return-receipt requested to:

City of New Rochelle
Department of Public
Works 515 North
Avenue
New Rochelle, New York 10801

Dated: White Plains, New York February 26, 2008

BRIAN R. HOCH, ESQ.



U.S. Postal Service **CERTIFIED MAIL™ RECEIPT**

.(Domestic Mail Only; No Insurance Coverage Provided) ' _ For delivery information visit our website at www.usps.com)

Postage

Certified Fee

Return Receipt Fee (Endorsement Required)

Restricted Delivery Fee (Endorsement Required)

Total Postage & Fees

Postmark Here

0000

neec dp

k5⁺ or PO Box NO fkk .
o- ^-----.....M
 City IV, ZIP+J y~n~'~'~' 16 1 ngQ'

U.S. Postal Service m, GE'FiTIFIED MAIL, RECEIPT

(Restrict Mail Only, - No Insurance Coverage Provided)



For delivery information	visit our website at www.usps.com
Postage	
Certified Fee	1.00
Return Receipt Fee (Endorsement)	
Restricted Delivery Fee (Endorsement)	
Total Postage & Fees	

ant o

(SS- +tfu"-cr f~"~ ~)

\$iieei, Apd.No./ or PO Box No. I S
 o--o-----o--o-----City, state, Z/W

SENDER:		I also wish to receive the following services (for an extra fee):
p complete items t and/or 2 br additional services. p Print your name and address on the reverse of this form so that we can return card to you. t7 Attach this form to the front of the mailpiece, or on the back if space does not permit. E3 The Return Receipt will show to whom the article was delivered and the date delivered.		2. O Restricted Delivery
4a. Article Number	7006 alsb o00 / ~03'7	
4b. Service Type	0 ~Express Mail 1:3 Insured	
7. Date of Delivery		
5. Re ed By: 'nt Name)		8. Addressee's Address (Only if requested and fee is paid)



in.w..... e:.... Myafi

Receipt

- SENDER:

- in** 0 Complete items 1 and 2 for additional services.
- m** Complete items 3, 4a, and 4b.
- p** Print your name and address on the reverse of this form so that we can return this card to you.
- m** Attach this form to the front of the mailpiece, or on the back if space does not permit.
- t p** Write "Return Receipt requested" on the mailpiece below the article number.
- 0 The Return Receipt will show to whom the article was delivered and the date delivered.
3. Article Addressed to:

CL p o

I _

-

{hft" t\ (~ 10 g© (

a>

2 • 0 Restricted Delivery

I also wish to receive the following service(s) (for an extra fee):

1 • 0 Addressee's Address

u 11...t
LAAA

0 ~ 1

4b. Service Type

CI Registered Certified

0 Express Mail

0 Insured .CJ Return Receipt for Merchandise 0 COD

F, S. Recei B . rint ft me)

i

0 6. Signature (A d _____ sa or Agent)

a.
a)
d

4a. Article Number

7,0060Sb000 ((' 037962-0 _

OI c
N

Date of Deliver .

0

8. Addressee's Address (Only If requested and C fee is paid) t r

7.

N

PS Form 3811, December 1994

10...355-99, B-0223 Domestic Return Receipt

AFFIRMATION OF SERVICE

~SZ~ _!! ~.~ °- -.....

i© y~ 4
PS Form 3800, August 2006
See Reverse for Instructions



THE RETURN ADDRESS, FOLD AT DOTTED LINE

CERTIFIED MAIL,

LAW OFFICES
BRIAN R. HOCH

3 BARKER AVENUE
WHITE PLAINS, NEW YORK 10601

ii

Oil

i1

7006 2150 0001 603? 8590

Frank Tricari--:~ IC"OntCc?GtQCS, Inc.
55 Provost Avenue
Bronx, New Yo-!,'A ^~.,C



a 042J80065620

04 Q
02/2610&i
f4ailed From 10601.

3:.,. ;_~.;~:::1 ~&~Vlg

9® oWxaoom

1013

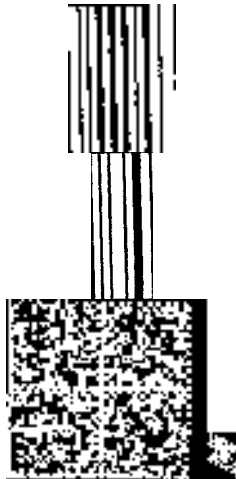
$$1 \sim, III \sim, \sim Ih \sim II \sim, \sim II, Ir III 1 \sim 1 \sim 1 \sim 1, \sim I \sim I \sim I \sim II$$

BRIAN R. HOCH, [ESQ.](#) an attorney duly admitted to practice law before the Courts of the State of New York hereby affirms the following under the penalties of perjury:

1. On February 26, 2008, I served a Notice Under Mechanic's Lien Law For Account of Public Improvement by certified mail return-receipt requested to:

ii

ii



042J80465620e LLJ ®

9¹,
02126/08

7006 2150 0001 6037 8583

1V9aited Fmrn 1()601



1-rartK l"Picar;cej Gc,niraotors, Inc. 39Slf Provost Avenue **Bronx,**
New Yc ' ' - -

.~.~.~ too ~I,.. ~ ____q'p' 03l143/08

RETURN TO **SENDER UNCLAIMED UNABLE TO FORWARD**

OC: 1ta6011Sp9b

***isf33-OS**_er7-\$13-s.^;3

10s0a0IS®9

BBBMBICB E-celsubr, Publisher, NYC 10013

www.blumberg.com

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

Index No.

Year

BYRAM CONCRETE & SUPPLY, INC. and BYRAM
READY MIX, INC.,

against

CITY OF NEW ROCHELLE and FRANK TRICARICO
CONTRACTORS, et al.,

Plaintiff(s)

Defendant(s)

SUMMONS AND VERIFIED COMPLAINT

BRIAN R. HOCH, ESQ.
Attorney(s) for
Plaintiffs
Office and Post Office Address, Telephone
3 Barker Avenue
White Plains, New York 10601 914-421-1900

¹₁
To

Signature (Rule 130-1.1••a)

Attorney(s) for

Print name beneath

Service of a copy of the within is hereby admitted. Dated:

PLEASE TAKE NOTICE:

F NOTICE OF ENTRY

that the within is a true copy of a
duly entered in the office of the clerk of the within named court on

n NOTICE OF SETTLEMENT

that an order

will be presented for settlement to the HON.
within named Court, SUPREME
on

at

M

Dated

of which the within is a true copy one of the judges of the

Yours, etc.
RRT21\TP

unru 7. cn



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

X

BYRAM CONCRETE & SUPPLY, INC. and
433/09 BYRAM READY MIX, INC.,

Index No.:

Plaintiffs,

**VERIFIED
ANSWER
WITH
SETOFF
AND**

-against-
COUNTERCLAIM

CITY OF NEW ROCHELLE, FRANK
TRICARICO CONTRACTORS, INC. and
FRANK TRICARICO,

Defendants.

X

Defendants, FRANK TRICARICO CONTRACTORS, INC. and FRANK
TRICARICO (the "answering defendants"), by their attorneys The McDonough Law Firm,
L.L.P., as and for their verified answer to the verified complaint, states as follows:

FIRST CAUSE OF ACTION

1. Admit the allegations contained in paragraphs 4, 5 and 6 of the verified complaint.

2. Deny the allegations contained in paragraphs 3, 7, 8 and 13 of the verified complaint.

3. Deny knowledge or information sufficient to form a belief as to the truth of the

allegations contained in paragraphs 1, 2 and 12 of the verified complaint.

4. Deny the allegations contained in paragraph 9 of the verified complaint and refer the

Court to the alleged liens for their terms and import.

5. Deny the allegations contained in paragraphs 10 and 11 of the verified complaint and refer all questions of law to the Court.

SECOND CAUSE OF ACTION

6. Defendants repeat and reallege their responses to paragraphs 1 through 13 for their

answer to paragraph 14 of the verified complaint, as if fully set forth.

7. Deny the allegations contained in paragraphs 15, 16 and 17 of the verified complaint.

THIRD CAUSE OF ACTION

8. Defendants repeat and reallege their responses to paragraphs 1 through 17 for their answer to paragraph 18 of the verified complaint, as if fully set forth.

9. Deny the allegations contained in paragraphs 19,20,21,22,23,;24,25,26,27,28 and 29 of the verified complaint.

FOURTH CAUSE OF ACTION

10. Defendants repeat and reallege their responses to paragraphs 1 through 29 for their

answer to paragraph 30 of the verified complaint, as if fully set forth.

11. Deny the allegations contained in paragraphs 31, 32 and 33 of the verified

complaint.

FIFTH CAUSE OF ACTION

12. Defendants repeat and reallege their responses to paragraphs 1. through 33 for their

answer to paragraph 34 of the verified complaint, as if fully set forth.

13. Deny the allegations contained in paragraphs 35 and 36 of the verified complaint.

2

SEVENTH AFFIRMATIVE DEFENSE

20. Plaintiffs' complaint is barred and/or offset by the damage to defendants

Frank Tricarico Contractors, Inc. and Frank Tricarico, individually.

AS AND FOR DEFENDANTS FIRST SETOFF

AND COUNTERCLAIM AGAINST PLAINTIFFS

21. Upon information and belief, Byram Concrete and Supply, Inc. is a corporation organized under the laws of the State of New York with its principal offices at 56 Lafayette Avenue, White Plains, New York.

22. Upon information and belief, plaintiff Byram Ready Mix, Inc. is a corporation organized under the laws of the State of New York with its principal offices at 56 Lafayette Avenue, White Plains, New York.

23. Defendant Frank Tricarico Contractors, Inc. is a domestic corporation organized and existing under the laws of the State of New York.

24. Defendant Frank Tricarico is an individual who resides in the State of New York.

25. Plaintiffs entered into an agreement with Defendants to supply certain materials and supplies.

26. Plaintiffs failed to provide and deliver materials and supplies as required by

the agreement.

27. Plaintiffs breached their agreement by failing to perform in a proper manner and by failing to timely deliver materials and supplies as required under the agreement.

28. Plaintiffs breached their agreement with Defendants and caused damages to

4



SUPREME COURT OF THE STATE OF NEW
YORK COUNTY OF WESTCHESTER

BYRAM CONCRETE & SUPPLY, INC, and
BYRAM READY MIX, INC.,

Plaintiffs,

- against -

CITY OF NEW ROCHELLE, FRANK TRICARICO
ROCHELLE CONTRACTORS, INC. and FRANK TRICARICO,

Defendants.

----- = x

: Index No., 433/2008

: **VERIFIED ANSWER
FOR**

: **CITY OF NEW**

:

----- = x

Defendant City of New Rochelle ("City"), by its attorneys, Wilson, Elser,
Moskowitz, Edelman & Dicker LLP, as and for its verified answer, alleges as
follows:

As and For a Response to the First Cause of Action

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶1 of the complaint.

2. Denies the allegations contained in ¶2 of the complaint, except admits

that the City is a municipal corporation organized and existing under the laws of the state of New York.

3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶3 of the complaint.

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶4 of the complaint.

5. Denies the truth of the allegations contained in ¶5 of the complaint, and respectfully refers to the agreement for Project No. 04-597-P9 for the true; and correct contents thereof.

2277464.1

I

6. Denies the truth of the allegations contained in ¶6 of the complaint.

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶7 of the complaint.

8. Denies the truth of the allegations contained in ¶8 of the complaint, and respectfully refers all questions of law to the Court.

9. Denies the truth of the allegations contained in ¶9 of the complaint, and respectfully refers all questions of law to the Court.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶10 of the complaint, and respectfully refers all questions of law to the Court.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶11 of the complaint.

12. Denies knowledge or information sufficient to form a belief as to the truth of the

allegations contained in 1112 of the complaint, except denies that any sums are due and owing from the City to defendant Frank Tricarico Contractors, Inc.

13. Denies the truth of the allegations contained in ¶13 of the complaint, and respectfully refers all questions of law to the Court.

As and For a Response to the Second Cause of Action

14. Repeats and realleges each response to paragraphs I through 13 above as if fully set forth herein.

15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶15 of the complaint.

2
2277464.1

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶16 of the complaint.

17. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶17 of the complaint.

As and For a Response to the Third Cause of Action

18. Repeats and realleges each response to paragraphs I through 17 above as if fully set forth herein.

19. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶19 of the complaint.

20. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶20 of the complaint.

21. Denies knowledge or information sufficient to form a belief as to the truth of

the allegations contained in ¶21 of the complaint.

22. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶22 of the complaint.

23. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶23 of the complaint.

24. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶24 of the complaint.

25. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶25 of the complaint.

26. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶26 of the complaint.

3
2277464.1

27. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶27 of the complaint.

28. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶28 of the complaint.

29. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶29 of the complaint.

As and For a Response to the Third Cause of Action

30. Repeats and realleges each response to paragraphs 1 through 29 above as if fully set forth herein.

31. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 31 of the complaint.

32. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶32 of the complaint.

33. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶33 of the complaint.

As and For a Response to the Fifth Cause of Action

34. Repeats and realleges each response to paragraphs 1 through 33 above as if fully set forth herein.

35. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶35 of the complaint.

36. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶36 of the complaint.

2277464.1

4

AS AND FOR THE CITY'S AFFIRMATIVE DEFENSES

First Affirmative Defense

37. The complaint fails to state a cause of action upon which relief may be granted.

Second Affirmative Defense

38. The liens alleged in the complaint fail to conform to the statutory requirements set forth in the relevant provisions of Article 2 of the New York Lien Law.

Third Affirmative Defense

39. Plaintiff failed to comply with the provisions of Section 127 of the New Rochelle City Charter.

Fourth Affirmative Defense

40. Plaintiffs lack privity of contract with the City of New Rochelle.

Fifth Affirmative Defense

41. Upon information and belief, plaintiffs have been paid in full by defendants Frank Tricarico Contractors, Inc. and/or Frank Tricarico for any materials supplied by plaintiffs in connection with the North Avenue Road Widening Project.

**AS AND FOR THE CITY'S CROSS CLAIMS AGAINST
DEFENDANT FRANK TRICARIO CONTRACTORS, INC.**

42. The City of New Rochelle entered into a contract with Frank Tricarico Contractors, Inc. for a project entitled: CITY OF NEW ROCHELLE NORTH AVENUE ROAD WIDENING (COLLEGE DISTRICT) FIFTH AVENUE TO EASTCHESTER ROAD, PROJECT # 04-597-P9 (the "Contract").

43. The Contract contains an "Indemnification Agreement," at page H-1 thereof, stating as follows:

2277464.1

5

The Contractor agrees to protect, defend, indemnify and hold the City of New Rochelle, Dolph Rotfeld Engineering, P.C., I.Q. Landscape Architects, Accurate Engineering Associates and any agents, officers, employees and consultants of any of them; free and harmless from any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character in connection with or arising directly or indirectly out of this agreement and/or the performance hereof without limiting the generality of the foregoing, any and all such claims, etc., relating to personal injury, death, damage to property, defects in materials or workmanship, actual or alleged infringement of any patent, trademark, copyright (or application for any thereof) or of any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, decree of any court, shall be included in the indemnity hereunder. The Contractor further agrees to investigate, handle, respond to, provide defense for and defend any such claims, etc., at his sole expense and agrees to bear all the costs and expenses related thereto, even if it (claims, etc.), is groundless, false or fraudulent. In any case in which such indemnification would violate Section 5-322.1 of the New York General Obligations Law, or any other applicable legal prohibition, the foregoing provisions concerning indemnification shall not be construed to indemnify the Owner for damage arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the owner, or its employees.

Contract, at p. H-1 (emphasis added).

44. Pursuant to the Indemnification Agreement contained in Section H of the Contract, defendant City of New Rochelle is entitled to indemnification from defendant Frank Tricarico Contractors, Inc. from and against any judgment that might be entered against the City as alleged herein, and for reimbursement of all costs, expenses and fees, including attorneys' fees, incurred in the defense and/or settlement of the claims alleged herein.

6
2277464.1

WHEREFORE, the Defendant City of New Rochelle demands judgment as follows:
(i) dismissing the verified complaint with prejudice; (ii) requiring defendant Frank Tricarico Contractors, Inc. to reimburse the City for all costs, expenses and fees, including attorneys' fees, incurred in the defense and/or settlement of the claims alleged herein; (iii) requiring defendant Frank Tricarico Contractors, Inc. to indemnify the City against any judgment that might be entered against the City herein; and (iv) for such other, different and further relief as the Court in its discretion may deem just and proper.

Dated: White Plains, New York March 20, 2009

WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP
Attorneys for Defendant The City of
New Rochelle

A handwritten signature in black ink, appearing to read 'Lalit K. Loomba', is written over a horizontal line.

Lalit K. Loomba

3 Gannett Drive
White Plains, NY 10604
(914) 323-7000 File No.
07367.00085

TO:

BRIAN R. HOCH,
ESQ. Attorneys for
Plaintiffs 3 Barker
Avenue White Plains,
NY 10601 (914) 421-
1900

THE McDONOUGH LAW FIRM,
LLC Attorneys for defendants Frank
Tricarico Contractors, Inc. and Frank
Tricarico 145 Huguenot Street
New Rochelle, NY 10801
(914) 632-4700
Attn: Frank T. Cara, Esq.

7
2277464.1

Verification

Lalit K. Loomba, an attorney admitted to practice law before the Courts of the State of New York hereby verifies:

I am an associate with the firm of Wilson, Elser, Moskowitz, Edelman & Dicker LLP, the attorneys for defendant the City of New Rochelle. I have reviewed the foregoing answer and affirmative defenses and know the allegations therein to be true, except as to those matters which are alleged on information and belief, as to which I believe them to be true. I make this verification on behalf of defendant the City of New Rochelle pursuant to CPLR §3020(d)(2) based on my review of the records and files maintained by this office in this action.

..- ~.

..--

Lalit K. Loomba



Sworn to before me this 'Deday of March 2009

Notary Public

PATRICIA HARRIS
NOTARY PUBLIC, State of New York
No. 01HA6165423
qualinee in westchester county
CpnvnissiOn Expires May 7, 2011

